



**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Authorize City Manager to Execute Partial Assignment and Assumption of the Reynolds Ranch Development Agreement from San Joaquin Valley Land Company, LLC to Skinner Ranch Holdings, LP

**MEETING DATE:** March 2, 2011 City Council Meeting

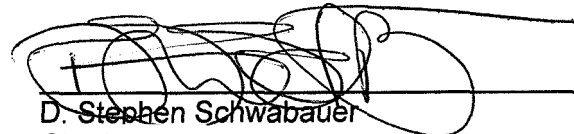
**PREPARED BY:** City Attorney

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**RECOMMENDED ACTION:** Authorize City Manager to Execute Partial Assignment and Assumption of the Reynolds Ranch Development Agreement from San Joaquin Valley Land Company, LLC to Skinner Ranch Holdings, LP.

**BACKGROUND INFORMATION:** San Joaquin Valley Land Company transferred ownership of the Home Depot site to Skinner Ranch Holdings, which will be Home Depots' landlord, but did not yet assign the attendant rights and obligations of the Reynolds Ranch Development Agreement. Home Depot's counsel requested that landlord Skinner secure the rights and obligations of the Reynolds Ranch Development Agreement for Home Depot's protection. The attached assignment is only partial: it only assigns the Home Depot site rights and obligations and it does not relieve San Joaquin Valley Land Company of its Development Agreement obligations. Because the assignment merely adds an additional party to enforce the Development Agreement obligations against, staff recommends that Council authorize the City Manager to execute the partial assignment.

**FISCAL IMPACT:** N/A



D. Stephen Schwabauer  
City Attorney

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**APPROVED:**



Konradt Bartlam, City Manager

OFFICIAL BUSINESS

Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910  
Attn: City Clerk

(SPACE-ABOVE-THIS LINE-RESERVED FOR-RECORDER'S USE)

**PARTIAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (hereinafter, the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between San Joaquin Valley Land Company, LLC, a California limited liability company (hereinafter "Developer"), and Skinner Ranch Holdings, LP, a California limited partnership (hereinafter "Assignee").

**RECITALS**

1. On September 6, 2006, the City of Lodi and Developer entered into that certain agreement entitled "Development Agreement Reynolds Ranch" (the "Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (the "Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of San Joaquin County on December 26, 2006, as Instrument No. 2006-268372.

2. Prior to the date of this Agreement, Assignee has acquired a portion of the Subject Property as more particularly identified and described in Exhibit A-1, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

3. Effective as of the date Assignee acquired the Assigned Parcel (the "Effective Date"), Developer desires to assign, and Assignee desires to assume, all of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

**ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, Developer and Assignee hereby agree as follows:

1. Developer hereby assigns, effective as of the Effective Date, all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. Except as expressly assigned to and assumed by other parties by other instruments (including without limitation that certain Assignment and Assumption of Development Agreement and Grant of Easement by and between Developer, the City and California Physicians' Service dba Blue Shield of California recorded on June 26, 2007 as Instrument Number 2007-117829 in the Official Records of San Joaquin County [the "Official Records"] and that certain Assignment and Assumption of Development Agreement by and between Developer, the City and Costco Wholesale Corporation, recorded on August 31, 2010 as Instrument Number 2010-114461 in the Official Records [collectively, the "Other Instruments"]), Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Developer.

2. Effective as the Effective Date, Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement, Assignee shall become substituted for Developer as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. San Joaquin Valley Land Company, LLC, shall not be released from any of its burdens and obligations under the Development Agreement. After the Effective Date, San Joaquin Valley Land Company, LLC shall continue to remain obligated to perform all covenants, conditions, obligations and duties required to be performed by Landowner under the Development Agreement, and shall not be relieved of any such performance thereunder as a result of this Agreement.

4. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

5. The Notice Address described in Section 29 of the Development Agreement for the Assignee with respect to the Assigned Parcel shall be:

ASSIGNEE:

SKINNER RANCH HOLDINGS, LP  
1420 S. Mills Avenue, Suite K  
Lodi, CA 95242

6. Developer agrees to indemnify, defend (with counsel reasonably acceptable to Assignee) and hold harmless Assignee, its officers, directors, members, partners, employees, agents, representatives, successors and assigns from and against any costs (including, without limitation, reasonable attorneys costs and fees), claims, damages or causes of action arising out of or resulting from the failure of Developer to comply with or perform the covenants, conditions, agreements, duties and obligations of Developer under the Development Agreement

or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement with respect to (a) the Assigned Parcel and arising prior to the Effective Date, and (b) the Subject Property arising at any time, except with respect to the Assigned Parcel on or after the Effective Date and except to the extent assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Instruments).

7. Assignee agrees to indemnify, defend (with counsel reasonably acceptable to Developer) and hold harmless Developer, its officers, directors, members, partners, employees, agents, representatives, successors and assigns from and against any costs (including, without limitation, reasonable attorneys costs and fees), claims, damages or causes of action arising out of or resulting from the failure of Assignee to comply with or perform the covenants, conditions, agreements, duties and obligations of Assignee under the Development Agreement or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement with respect to the Assigned Parcel and arising on or after the Effective Date.

8. Miscellaneous.

- A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- B. Successor and Assigns. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- C. Attorneys' Fees. If any party hereto brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs and expenses of litigation, including reasonable attorneys' fees.
- D. Incorporation of Exhibits. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.
- E. Counterparts. This Agreement may be signed in identical counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

ASSIGNEE:

SAN JOAQUIN VALLEY LAND COMPANY,  
LLC

SKINNER RANCH HOLDINGS, L.P., a  
California limited partnership

By: \_\_\_\_\_  
Name: Dale N. Gillespie  
Title: Managing Member

By: Morse Skinner Properties, LLC  
a California limited liability company  
Its General Partner

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_


By its signature below, the City consents to the assignment to and assumption by Assignee of the Development Agreement upon the terms set forth herein.

CITY

CITY OF LODI

Form of Agreement hereby approved:

By: \_\_\_\_\_  
Name: Konradt Bartlam  
Title: City Manager

By: \_\_\_\_\_  
Name: D. Stephen Schwabauer  
Title: City Attorney 

Dated: \_\_\_\_\_, 2011

Dated: \_\_\_\_\_, 2011

STATE OF )  
 ) ss:  
COUNTY OF )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_(here  
insert name of the officer), Notary Public, personally appeared  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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Signature of Notary Public

[Seal]

STATE OF )  
 ) ss:  
COUNTY OF )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_(here  
insert name of the officer), Notary Public, personally appeared  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

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foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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Signature of Notary Public

[Seal]

STATE OF )  
 ) ss:  
COUNTY OF )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

---

Signature of Notary Public

[Seal]

STATE OF )  
 ) ss:  
COUNTY OF )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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Signature of Notary Public

[Seal]

## **EXHIBIT A-1**

### **LEGAL DESCRIPTION OF ASSIGNED PARCEL**

Parcels 2-14 of Parcel Map entitled "Parcel Map Reynolds Ranch Subdivision No. 08-P-03," recorded on August 31, 2010 in the City of Lodi, County of San Joaquin, State of California, in Book 25 of Parcel Maps, Page 86, in the Official Records of San Joaquin County, California.



OFFICIAL BUSINESS  
Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910  
**Attn:** City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

### **PARTIAL ASSIGNMENT AND ASSUMPTION AND MODIFICATION OF DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AND MODIFICATION OF DEVELOPMENT AGREEMENT (hereinafter, the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between San Joaquin Valley Land Company, LLC, a California limited liability company (hereinafter "Developer"), Skinner Ranch Holdings, LP, a California limited partnership (hereinafter "Assignee") and the City of Lodi (hereinafter, the "City").

### **RECITALS**

1. On September 6, 2006, the City of Lodi and Developer entered into that certain agreement entitled "Development Agreement Reynolds Ranch" (the "Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described in the Development Agreement (the "Subject Property"), subject to certain conditions and obligations **as** set forth in the Development Agreement. The Development Agreement ~~was~~ recorded against the Subject Property in the Official Records of San Joaquin County on December 26, 2006, **as** Instrument No. 2006-268372. Developer is referred to in the Agreement as "Landowner", and City and Developer hereby agree that the term Developer as used herein has the same meaning as "Landowner" in the Agreement.

2. Prior to the date of this Agreement, Assignee has acquired a portion of the Subject Property **as** more particularly identified and described in Exhibit A-1, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel").

3. Effective **as** of the date Assignee acquired the Assigned Parcel (the "Effective Date"), Developer desires to assign, and Assignee desires to assume, all of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and **as** related to the Assigned Parcel.

4. Additionally, the parties hereto desire to clarify the provisions of Section 23 of the Development Agreement by adding a new sentence thereto, all **as** hereinafter set forth.

**ASSIGNMENT, ASSUMPTION AND MODIFICATION**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer, Assignee and the City hereby agree **as** follows:

1. **Assignment.** Developer hereby assigns, effective **as** of the Effective Date, all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. Except **as** expressly assigned to and assumed by other parties by other instruments (including without limitation that certain Assignment and Assumption of Development Agreement and Grant of Easement by and between Developer, the City and California Physicians' Service dba Blue Shield of California recorded **on** June 26, 2007 **as** Instrument Number 2007-117829 in the Official Records of San Joaquin County [the "Official Records"] and that certain Assignment and Assumption of Development Agreement by and between Developer, the City and Costco Wholesale Corporation, recorded on August 31, 2010 **as** Instrument Number 2010-114461 in the Official Records [collectively, the "Other Instruments"]), Developer retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect to all other property within the Subject Property owned by Developer.

2. **Assumption.** Effective as the Effective Date, Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement, Assignee shall become substituted for Developer **as** the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. **No Release.** San Joaquin Valley Land Company, LLC, shall not be released from any of its burdens and obligations under the Development Agreement. After the Effective Date, San Joaquin Valley Land Company, LLC shall continue to remain obligated to perform all covenants, conditions, obligations and duties required to be performed by Landowner under the Development Agreement, and shall not be relieved of any such performance thereunder **as** a result of this Agreement.

4. **Binding on Successors.** All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

5. **Notice.** The Notice Address described in Section 29 of the Development Agreement for the Assignee with respect to the Assigned Parcel shall be:

ASSIGNEE:

SKINNER RANCH HOLDINGS, LP  
1420 S. Mills Avenue, Suite K

6. Developer's Indemnity. Developer agrees to indemnify, defend (with counsel reasonably acceptable to Assignee) and hold harmless Assignee, its officers, directors, members, partners, employees, agents, representatives, successors and assigns from and against any costs (including, without limitation, reasonable attorneys costs and fees), claims, damages or causes of action arising out of or resulting from the failure of Developer to comply with or perform the covenants, conditions, agreements, duties and obligations of Developer under the Development Agreement or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement with respect to (a) the Assigned Parcel and arising prior to the Effective Date, and (b) the Subject Property arising at any time, except with respect to the Assigned Parcel on or after the Effective Date and except to the extent assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Instruments).

7. Assignee's Indemnity. Assignee agrees to indemnify, defend (with counsel reasonably acceptable to Developer) and hold harmless Developer, its officers, directors, members, partners, employees, agents, representatives, successors and assigns from and against any costs (including, without limitation, reasonable attorneys costs and fees), claims, damages or causes of action arising out of or resulting from the failure of Assignee to comply with or perform the covenants, conditions, agreements, duties and obligations of Assignee under the Development Agreement or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement with respect to the Assigned Parcel and arising on or after the Effective Date.

8. Modification of Section 23. City, Developer and Assignee hereby agree to add the following sentence to the end of Section 23 of the Development Agreement:

"Notwithstanding the foregoing, this Section does not ~~create any~~ contractual right in favor of the City, Developer or any other party to require a third party with a leasehold interest (a "Leasehold Interest") in a legal parcel created by that certain Parcel Map entitled "Parcel Map Reynolds Ranch Subdivision No. 08-P-03" and recorded on August 31, 2010 in **Book** 25 of Parcel Maps, Page 86 in the Official Records of San Joaquin County, California (the "Parcel Map") or any portion thereof (including, without limitation, the tenant of Parcel 5 as depicted on the Parcel Map) to perform any of Developer's obligations and covenants as set forth herein, including, without limitation, the payment of fees and exactions set forth in the Agreement except for the fees set forth in Sections 6.1.1, 6.1.3 and 6.1.4 of the Agreement to the extent such fees are part of any discretionary or land use entitlement applicable to such Leasehold Interest, such fee is collected in connection with any building permit obtained by the holder of such Leasehold Interest, and such fee is applied uniformly to all similarly situated properties that are subject to the Agreement."

Deleted: grant the City a

9. Miscellaneous.

- A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- B. Successor and Assigns. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- C. Attorneys' Fees. If any party hereto brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs and expenses of litigation, including reasonable attorneys' fees.
- D. Incorporation of Exhibits. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.
- E. Counterparts. This Agreement may be signed in identical counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS **HEREOF**, the parties hereto have executed this Agreement **as** of the day and year first above written.

DEVELOPER

ASSIGNEE:

SAN JOAQUIN VALLEY LAND COMPANY, LLC

**SKINNER** RANCH HOLDINGS, L.P., a California limited partnership

By: \_\_\_\_\_  
Name: Dale N. Gillespie  
Title: Managing Member

By: Morse Skinner Properties, LLC  
a California limited liability company  
Its General Partner

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY

CITY OF LODI

Form of Agreement hereby approved:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Attorney

Dated: \_\_\_\_\_, 2011

Dated: \_\_\_\_\_, 2011

STATE OF )  
 ) ss:  
COUNTY OF )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_ (here  
insert name of the officer), Notary Public, personally appeared  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Seal]

STATE OF )  
 ) ss:  
COUNTY OF )

On \_\_\_\_\_, 2011 before me, \_\_\_\_\_ (here  
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evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
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[Seal]

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COUNTY OF )

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Signature of Notary Public

[Seal]

STATE OF )  
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COUNTY OF )

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evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and  
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and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

[Seal]

## **EXHIBIT A-1**

### **LEGAL DESCRIPTION OF ASSIGNED PARCEL**

Parcels **2-14** of Parcel Map entitled "Parcel Map Reynolds Ranch Subdivision No. 08-P-03," recorded on August 31, **2010** in the City of Lodi, County of San Joaquin, State of California, in Book **25** of Parcel Maps, Page 86, in the Official Records of San Joaquin County, California.